

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 202004592	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/23/2020 8:55 AM	Location of Incident: the vicinity of Bay Ridge Avenue and Fort Hamilton Parkway	Precinct: 68	18 Mo. SOL 12/23/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/24/2020 7:25 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 06/24/2020 7:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Kenneth Ayala	04727	905736	ESS 06

Officer(s)	Allegation	Investigator Recommendation
A.DT2 Kenneth Ayala	Abuse: Detective Kenneth Ayala stopped the vehicle in which § 87(2)(b) was an occupant.	
B.DT2 Kenneth Ayala	Off. Language: Detective Kenneth Ayala made remarks to § 87(2)(b) based upon her gender.	
C.DT2 Kenneth Ayala	Abuse: Detective Kenneth Ayala threatened to arrest § 87(2)(b)	
D.DT2 Kenneth Ayala	Abuse: Detective Kenneth Ayala took photographs of § 87(2)(b)	
E.DT2 Kenneth Ayala	Discourtesy: Detective Kenneth Ayala acted discourteously toward § 87(2)(b)	
F.DT2 Kenneth Ayala	Discourtesy: Detective Kenneth Ayala acted discourteously toward § 87(2)(b)	
G.DT2 Kenneth Ayala	Discourtesy: Detective Kenneth Ayala spoke discourteously to § 87(2)(b)	
H.DT2 Kenneth Ayala	Force: Detective Kenneth Ayala used physical force against § 87(2)(b)	
I.DT2 Kenneth Ayala	Force: Detective Kenneth Ayala pointed his gun at § 87(2)(b)	
J.DT2 Kenneth Ayala	Untruthful Stmt.: Detective Kenneth Ayala provided a false official statement to the CCRB.	

### Case Summary

The following complaint was filed by § 87(2)(b) via the CCRB's call processing system on June 24, 2020. On February 19, 2021, § 87(2)(b) filed a duplicate complaint with IAB by email, generating IAB log § 87(2)(b). As of March 23, 2021, the NYPD's investigation into this incident is still active.

On June 23, 2020, at approximately 8:55 a.m., § 87(2)(b) stopped her vehicle at a red light at Bay Ridge Avenue and Fort Hamilton Parkway in Brooklyn. Emergency Services Unit (ESU) officer, Det. Kenneth Ayala, was off duty when he placed his car in front of § 87(2)(b) to prevent her from continuing when the light changed (**Allegation A: Abuse of Authority**, § 87(2)(g)). Det. Ayala exited his vehicle and called § 87(2)(b) multiple times a "bitch," a "slut," and a "[stupid] cunt" (**Allegation B: Offensive Language**, § 87(2)(g)). Det. Ayala alleged that § 87(2)(b) vehicle had earlier collided with his and threatened to get her arrested (**Allegation C: Abuse of Authority**, § 87(2)(g)). Det. Ayala took photographs with his department-issued cellphone of § 87(2)(b) and her vehicle (**Allegation D: Abuse of Authority**, § 87(2)(g)). Det. Ayala allegedly kicked and hit § 87(2)(b) vehicle multiple times (**Allegation E: Discourtesy**, § 87(2)(g)). When § 87(2)(b) allegedly tried to reverse her vehicle, Det. Ayala jumped on the hood of her vehicle and hit the vehicle multiple times (**Allegation F: Discourtesy**, § 87(2)(g)). § 87(2)(b) called her father, § 87(2)(b) who came to the scene. Before § 87(2)(b) arrived, § 87(2)(b) arrived on scene in his motor vehicle and heard Det. Ayala tell § 87(2)(b) to "get the fuck out" of her vehicle (**Allegation G: Discourtesy**, § 87(2)(g)). Det. Ayala allegedly reached into § 87(2)(b) vehicle and pushed her head (**Allegation H: Force**, § 87(2)(g)). Det. Ayala allegedly drew his firearm and pointed it at § 87(2)(b) (**Allegation I: Force**, § 87(2)(g)). § 87(2)(b) arrived on scene and exchanged words with Det. Ayala before the officer left the scene.

During his CCRB interview, Det. Ayala made a false official statement (**Allegation J: Untruthful Statement**, § 87(2)(g)).

No arrests or summonses are associated with this incident.

The investigation did not locate any video evidence for this incident.

### Findings and Recommendations

**Allegation A – Abuse of Authority: Detective Kenneth Ayala stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C – Abuse of Authority: Detective Kenneth Ayala threatened to arrest § 87(2)(b).**

§ 87(2)(b) stated she entered her parked car at the corner of 71<sup>st</sup> Street and Ft. Hamilton Parkway in Brooklyn and observed Det. Ayala's vehicle double-parked approximately 18 inches behind her vehicle (BR 01-0). She assumed Det. Ayala was waiting to pull into her parking spot. § 87(2)(b) pulled out of the spot and drove down 71<sup>st</sup> Street until the end of the block and made a left on 10<sup>th</sup> Avenue. When exiting the parking spot, she noticed no issues or collisions and noted that her vehicle is from 2019 and has very strict safety features, such as beeping before colliding with an object and even autolocking if a collision is imminent. She drove two blocks and took a left on Bay Ridge Avenue, a two-way street, stopping behind three or four vehicles at a red light at the next corner at Fort Hamilton Parkway. § 87(2)(b) noticed Det. Ayala's vehicle again for the first time as he pulled up alongside her vehicle, stopping in the opposite lane of traffic. § 87(2)(b) had her windows up already and was listening to music. Det. Ayala had his passenger window down and appeared to be yelling at § 87(2)(b) in an angry and argumentative manner. § 87(2)(b) did not want to engage him, so she increased the music volume and ignored him. Det. Ayala pulled up alongside the vehicle in front of § 87(2)(b) and she observed him speaking with the other driver and pointing at § 87(2)(b) vehicle. When the light changed, the vehicles in front of § 87(2)(b) moved forward

and Det. Ayala turned his car right and perpendicular to traffic, leaving minimal space in either lane for vehicles to drive and blocking § 87(2)(b) from driving forward. Det. Ayala exited his vehicle and approached § 87(2)(b) at her vehicle's driver's window. § 87(2)(b) identified Det. Ayala, whom she was not familiar with, as a police officer as she saw he carried a firearm in a holster on his right hip and the fact that at some point he used "criminal terminology" by telling her she was "fleeing the scene of a crime." After stopping her vehicle, Det. Ayala called her "civilized like a criminal" and told her he could get her arrested for hitting his vehicle and driving away.

§ 87(2)(b) provided three photographs that she took during the incident while seated in her driver's seat (BR 03). They depict Det. Ayala's vehicle at a 45-degree angle on Bay Ridge Avenue, with the rear of his vehicle slightly in the opposite lane of traffic with the front of his vehicle pointed toward Ft. Hamilton Parkway.

§ 87(2)(b) (BR 04) arrived after Det. Ayala had stopped in his vehicle in front of § 87(2)(b). He crossed Ft. Hamilton Parkway while driving down Bay Ridge Avenue and observed in the opposite lane Det. Ayala outside of his vehicle yelling at § 87(2)(b) in her vehicle, with her driver's window halfway down. § 87(2)(b) lane of traffic could move but the other lane of traffic was stuck behind Det. Ayala and § 87(2)(b). Det. Ayala's vehicle was at an angle, as if he went around her and cut her off. § 87(2)(b) stopped next to § 87(2)(b) car in the opposite lane of traffic. § 87(2)(b) immediately observed Det. Ayala's holstered firearm and, also due to § 87(2)(b) recognizing Det. Ayala's mannerisms to resemble many of the family members he has who are police officers, was certain he was also an officer. Det. Ayala never identified himself as a police officer. § 87(2)(b) waited a few minutes until he asked Det. Ayala, "Officer, is everything okay?" Det. Ayala turned to him and explained that the woman had hit his car or cut him off. § 87(2)(b) looked at both vehicles and observed no damage. § 87(2)(b) did not recall Det. Ayala mentioning any potential arrest of § 87(2)(b).

§ 87(2)(b) arrived on scene after Det. Ayala had stopped his vehicle and had returned inside (BR 05). He described Det. Ayala's vehicle at a 45-degree angle across the crosswalk and it appeared to be cutting off § 87(2)(b) vehicle and both lanes of traffic. He arrived after Det. Ayala allegedly mentioned potential arrest to § 87(2)(b).

Det. Ayala stated he took a left onto 71<sup>st</sup> Street or 73<sup>rd</sup> Street from Fort Hamilton Parkway toward 10<sup>th</sup> Avenue (BR 06-07). He was off duty at the time and driving a personal vehicle registered to his wife. § 87(2)(b) was parked in the second vehicle from the corner on the left and she abruptly pulled out into traffic as Det. Ayala approached on her passenger side. Det. Ayala swerved to the right to avoid her vehicle and at the time believed the front right corner of his vehicle collided with a parked vehicle on his passenger side. The front right part of § 87(2)(b) vehicle collided with the front left corner of Det. Ayala's vehicle. § 87(2)(b) continued down the street at a high speed, reaching approximately 60 miles per hour by the time she reached the end of the block at 10<sup>th</sup> Avenue. Det. Ayala exited his vehicle to inspect the parked vehicle he believed he had hit and observed no apparent damage before returning to his vehicle. He was out of his vehicle for approximately five seconds and observed § 87(2)(b) turn left onto 10<sup>th</sup> Avenue. He followed her vehicle and drove two car lengths behind her on 10<sup>th</sup> Avenue. Det. Ayala rolled down both his front windows yelled to § 87(2)(b) continuously, "I'm calling the police. Stop your car. You hit my car." Det. Ayala turned onto Bay Ridge Avenue, a two-way street, after § 87(2)(b) and he stopped directly behind her at a red light at the next corner at Fort Hamilton Parkway. Det. Ayala continued to yell toward § 87(2)(b). One other vehicle was in front of § 87(2)(b). Det. Ayala stopped his vehicle at an angle behind the rear left corner of § 87(2)(b) vehicle, with the front of his vehicle crossing the double-yellow line and partially in the other lane. Det. Ayala exited his vehicle to inspect the front of his wife's. He looked at § 87(2)(b) in her vehicle and yelled repeatedly, loudly, and in simple phrases so that she could easily understand, "I'm calling the police. You hit my car. Stop your car." § 87(2)(b) looked away, rolled her eyes, and smirked. At some point, § 87(2)(b) rolled her windows halfway down and told him, "You don't talk that way to a woman." Det. Ayala told her it doesn't matter what she was, and she had to stop the car because he was calling the police. At some point

he observed § 87(2)(b) on her phone, and he assumed she was calling 911. He continued to yell at § 87(2)(b) until he assumed, she was calling 911 and was relieved as initially intended to call the police so that the proper documentation could be completed, a police accident report and/or a criminal complaint report. He no longer intended to call 911 because he thought § 87(2)(b) did. Det. Ayala wanted her to stop so that they could exchange insurance information, take photographs of their respective vehicles due to the collision, and to ensure that all proper documentation was completed. Det. Ayala got back in his vehicle and, as the light changed to green, and the front-most motorist moved forward. Det. Ayala pulled up ahead of the other motorist and placed his vehicle in front of § 87(2)(b). She did not move from her position and could not move forward due to his vehicle. Det. Ayala did not recall how he positioned his vehicle or if it obstructed the double-yellow line of the two-way street or any traffic coming from the opposite direction. He believed motorists driving on Bay Ridge Avenue from Ft. Hamilton Parkway to 10<sup>th</sup> Avenue could pass by him. He exited his vehicle to take photographs. Det. Ayala carried his off-duty firearm on his right hip and neither he nor his vehicle displayed any markings indicative of law enforcement or NYPD. Det. Ayala did not recall calling § 87(2)(b) a criminal but would not be surprised if he did based on the context that she fled the scene of a collision. He never told her he was going to arrest her or get her arrested. At some point while on scene, due to his quick assessments of both his and the other motorist's vehicles, he decided that as there was no apparent or significant damage to either car it would not be worth filing police or insurance documentation. He made this decision after taking photographs of the motorist and her vehicle.

The Event printout for this incident, ICAD § 87(2)(b), records § 87(2)(b) calling 911 to report a dispute involving a member of service (MOS) with a firearm and a badge (BR 08).

Criminal complaint report § 87(2)(b) filed by § 87(2)(b) after the incident, reports that Det. Ayala accused her of hitting his car and she noticed a possible firearm in his waistband (BR 09). It was closed without investigation.

Any person operating a motor vehicle who, knowing or having cause to know that damage has been caused to personal property, involving themselves, before leaving the place where the damage occurred, stop, exhibit his or her license and insurance identification card for such vehicle, and give her name, residence, and insurance information, and it shall be the duty of any member of a law enforcement agency who is at the scene of the accident to request the said operator or operators of the motor vehicles, when physically capable of doing so (BR 10). A violation of these provisions shall constitute a traffic infraction and no such provision includes lack of property damage nor lack of personal injury New York State Vehicle and Traffic Law § 600.

Det. Ayala was independently identified as an officer by all civilian parties interviewed, primarily due to the display of his firearm during this incident. As such, Det. Ayala invoked his authority as an officer.

§ 87(2)(b) denied colliding or causing any such collision as described by Det. Ayala. All parties confirmed there was no damage to either Det. Ayala's or § 87(2)(b) vehicle. Though he was off duty, he had the right to stop § 87(2)(b) for fleeing the scene of the collision involving property damage. However, there was none, and Det. Ayala had time to confirm property damage to the parked vehicle, which allowed him reasonable time to confirm the same for his vehicle before pursuing and stopping § 87(2)(b) vehicle. He prevented § 87(2)(b) vehicle from moving by intentionally stopping his vehicle in front of hers so that he could collect all necessary information for potential insurance and police documentation, which he himself deemed unnecessary due to the lack of property damage. Though Det. Ayala denied directly mentioning potential arrest to § 87(2)(b) he believed it possible he called her a "criminal," which implies legal enforcement to be taken against her especially given the context that she was aware that he was a police officer.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Offensive Language: Detective Kenneth Ayala made remarks to § 87(2)(b) based upon her gender.**

§ 87(2)(b) stated that Det. Ayala exited his vehicle and approached her vehicle's driver's window, which was closed. He yelled at her, calling her "bitch," "slut," and "cunt," multiple times, including calling her a "stupid cunt." He called her a "bitch" an additional time later in the incident when he was on the hood of her vehicle.

§ 87(2)(b) did not recall hearing Det. Ayala call § 87(2)(b) a "bitch" or a "slut." He did not hear Det. Ayala call her a "cunt." Det. Ayala stated a lot of words to § 87(2)(b) that he "should not have," but his recollection of those statements was unclear and the only specific profanity he recalled from Det. Ayala was not covered in this allegation. He described Det. Ayala as enraged and heated throughout the incident as he yelled at § 87(2)(b).

§ 87(2)(b) was not on scene at the time of this allegation.

Det. Ayala exited and initially stood at the passenger side of his wife's vehicle to assess potential damage from his apparent collision with the parked vehicle. He continued yelling at § 87(2)(b) to stop her vehicle and that he was calling the police. He described himself on the hood of § 87(2)(b) vehicle at some point and initially stated during his interview that he did not call her a bitch at that point before immediately rephrasing to say that he did not recall calling her a bitch. Det. Ayala did not recall calling § 87(2)(b) a "bitch" at any other point or calling her a "slut," a "cunt" or "something like that." Det. Ayala stated that he might have used the word "fuck," and could not think of any other profanity he might have used during the incident but did not recall using any profanity during the incident. He believed it was possible he used profanity as it was a heated incident, and his demeanor was elevated.

Officers are prohibited from making disrespectful remarks to § 87(2)(b) concerning their gender Patrol Guide Procedure 203-10 (BR 11).

Though no witness nor Det. Ayala could directly corroborate § 87(2)(b) allegation that Det. Ayala used sexist language against her, the investigation notes testimony regarding his general demeanor during the incident, lack of any apparent motivation for § 87(2)(b) to fabricate her testimony, and Det. Ayala's lack of recollection, as opposed to actual denial, § 87(2)(g).

§ 87(2)(b) The investigation notes in particular Det. Ayala's self-correction of taking back his denial of calling § 87(2)(b) a bitch, as well as other more definitive denials of utterances by comparison, which indicate he allowed himself a real possibility of using offensive language during the incident.

§ 87(2)(g)

**Allegation D – Abuse of Authority: Detective Kenneth Ayala took photographs of § 87(2)(b).**

§ 87(2)(b) stated that after Det. Ayala told her he could get her arrested, he returned to his vehicle and returned with a cellphone. He appeared to be recording her and her vehicle since he aimed the camera towards her.

Neither § 87(2)(b) nor § 87(2)(b) observed Det. Ayala take photographs of § 87(2)(b).

Det. Ayala stated he took photographs of § 87(2)(b) and her vehicle's front passenger side and front bumper to record any apparent damage and to potentially identify her in any subsequent documentation, including a criminal complaint report and a police accident report. He also took photographs as evidence for potential false claims by § 87(2)(b) and he referenced the general advice to always take photographs at the scene of an accident. He took photographs on his personal cellphone and did not use them or disseminate them other than in response to the CCRB's official request.

NYPD documentation confirms that Det. Ayala took photographs of § 87(2)(b) and her vehicle with his department-issued cellphone (BR 12-13)

Officers are prohibited from using their department-issued cellphone to photograph



encounters not directly related to official activities in the proper performance of their police duties NYPD Operations Order 20 (BR 14).

Despite Det. Ayala's assertion that he used a personal cellphone to photograph § 87(2)(b) and her vehicle, NYPD documentation contradicts this by providing such photographs from his department-issued cellphone. § 87(2)(g)

**Allegation E – Discourtesy: Detective Kenneth Ayala acted discourteously toward § 87(2)(b)**

**Allegation F – Discourtesy: Detective Kenneth Ayala acted discourteously toward § 87(2)(b)**

§ 87(2)(b) stated that as she tried to ignore Det. Ayala's photography of herself, Det. Ayala kicked her vehicle's driver's door and front left wheel and banged on the roof of the vehicle multiple times. § 87(2)(b) reversed less than a car length to try drive around the rear of Det. Ayala's vehicle but realized there was not sufficient space to do so. She waited another couple of minutes before she tried to reverse down the block to get away from Det. Ayala. She drove approximately three or four houses behind her vehicle as Det. Ayala ran after her vehicle and jumped on the hood of the vehicle with his feet leaving the ground. He hit the hood of her vehicle and her windshield near the rear-view mirror multiple times. § 87(2)(b) stopped her car after reversing past approximately one house further house with Det. Ayala on the hood. Det. Ayala slid off to his feet. Det. Ayala did not damage § 87(2)(b) vehicle when he kicked and hit it. § 87(2)(b) recalled § 87(2)(b) arriving after these allegations.

§ 87(2)(b) stated he did not recall observing § 87(2)(b) move her vehicle when he heard Det. Ayala yell at her, "You're not going anywhere!" Det. Ayala jumped on the hood of her vehicle "like a teenager." § 87(2)(b) did not recall exactly how Det. Ayala was positioned on the vehicle but described him placing his whole body on the hood by jumping on it. § 87(2)(b) did not move her vehicle while Det. Ayala was upon it. § 87(2)(b) never saw Det. Ayala kick or hit the § 87(2)(b) vehicle, even while on the vehicle. He stated the only physical impact he recalled was when Det. Ayala jumped on the hood. He stayed there for up to 20 seconds before getting off onto his feet.

§ 87(2)(b) was not on scene at the time of these allegations.

Det. Ayala stated that, before taking photographs of § 87(2)(b) he stood at the front passenger side of his vehicle to assess potential damage. His back faced the front of § 87(2)(b) vehicle front of motorist's and he paid partial attention to her in case she tried to move forward, which she did. The front of her vehicle was about two feet from Det. Ayala when it started moving forward. Det. Ayala stated he did not believe she intended to strike him with her vehicle as she was not looking directly at him, but he was in the path of her moving vehicle. He faced her vehicle and she drove slightly to her left toward the opposite lane of traffic. As Det. Ayala is not agile, partially due to a prior left leg injury, he did not feel confident moving to the left or right of her vehicle without being hit or run over. He believed that the safest route was to go on top of the vehicle's hood. As § 87(2)(b) drove toward Det. Ayala, he leaned forward and jumped slightly toward and onto the front of the hood of the vehicle and he put his hands down on the hood at either side of his head (a "Y" position) to brace himself against the vehicle. His upper body was on the hood of the vehicle. His feet either just left the ground or reached the ground just by his toes. He did not get on top of the vehicle other than bracing himself with his hands and the front of his torso. Det. Ayala repeatedly yelled for § 87(2)(b) to stop her vehicle. He did not otherwise touch the vehicle at any other point in the incident and denied ever kicking or hitting the vehicle in any way. He did not strike her windshield when he was on the hood of the vehicle as he was not close enough to do so. § 87(2)(b) stopped immediately after Det. Ayala braced himself on the hood of her vehicle. Det. Ayala did not recall her vehicle reversing or recall him getting on the vehicle as it reversed. Det. Ayala initially recalled being on the hood of the motorist's vehicle after placing his car in front of

hers but when attempting to clarify chronology and vehicle positioning during his interview, he stated he only recalled this portion of the incident occurring before he took photographs of § 87(2)(b) and her vehicle. Det. Ayala stood with firm footing as soon as she stopped and stopped touching her vehicle.

Officers are committed to treating every citizen with compassion, courtesy, professionalism, and respect NYPD Patrol Guide Procedure 200-02 (BR 15).

It is disputed whether Det. Ayala actively kicked and hit § 87(2)(b) vehicle and § 87(2)(b) was unable to corroborate that allegation by § 87(2)(b) potentially due to the timing of his arrival on scene. § 87(2)(g)

However, all parties present at the time agreed that Det. Ayala was on the hood of § 87(2)(b) vehicle. Though § 87(2)(b) did not recall § 87(2)(b) moving her vehicle at all, which contradicted both her allegation that she reversed and Det. Ayala's allegation that she drove toward him, he described Det. Ayala as intentionally jumping on her hood. § 87(2)(g)

**Allegation G – Discourtesy: Detective Kenneth Ayala spoke discourteously to § 87(2)(b)**

§ 87(2)(b) did not testify that Det. Ayala used the word “fuck” in speaking to her.

§ 87(2)(b) stated that when he initially arrived on scene, he heard Det. Ayala tell § 87(2)(b) to “get the fuck out” of her vehicle.

§ 87(2)(b) was not present for this allegation.

Det. Ayala did not recall using any profanity and never told her to leave her vehicle but stated he might have used profanity due to the elevated events, including the word “fuck,” and could not think of any other profanity he might have used during the incident. He did not recall telling her, “Get the fuck out of the vehicle.” The only specific statements he recalled using were along the lines of, “Stop your car, I’m calling the police.” He might have cursed because he was frustrated that she tried to leave without waiting for police response and acted dismissive. He would “not be surprised” if he directed the word “fuck” toward § 87(2)(b).

Officers are committed to treating every citizen with compassion, courtesy, professionalism, and respect NYPD Patrol Guide Procedure 200-02.

Though § 87(2)(b) did not testify to this, § 87(2)(b) an independent witness, did and Det. Ayala could not deny that he used the word “fuck” when speaking to § 87(2)(b). In fact, Det. Ayala stated he would not be surprised if he had used the word “fuck” during the incident without an exonerating context. § 87(2)(g)

**Allegation H – Force: Detective Kenneth Ayala used physical force against § 87(2)(b)**

**Allegation I – Force: Detective Kenneth Ayala pointed his gun at § 87(2)(b)**

§ 87(2)(b) stated that after Det. Ayala returned to his vehicle briefly following his mounting the hood of her vehicle and she had called her father to come to help, § 87(2)(b) pulled up from the opposite direction next to her and asked her if she was okay. They did not know each other. § 87(2)(b) windows had been up during the incident, but she lowered them to tell § 87(2)(b) she was not okay and did not know why Det. Ayala was acting like he was. § 87(2)(b) told him she could not call 911 and § 87(2)(b) told her he would. Det. Ayala exited his vehicle and approached § 87(2)(b) vehicle's driver's door. He stuck his right hand inside the slightly open window, pushing § 87(2)(b) left temple with his pointer and middle fingers. He then raised his shirt again to show the holstered firearm. § 87(2)(b) stated he had repeatedly raised his shirt to display his holstered firearm throughout the incident, including while he was mounted on the hood of her vehicle, which she interpreted as intention. § 87(2)(b) rolled her window up and Det. Ayala told her, “I don't think you want to do that,” lifting his shirt at the right hip again and taking his firearm out of the holster. He waved it in front of § 87(2)(b) driver's window for a few moments, during which the gun pointed at § 87(2)(b) upper chest and neck area. Det. Ayala put his firearm back in its holster.

§ 87(2)(b) stated he never observed Det. Ayala touch § 87(2)(b) or draw his firearm. He was certain that Det. Ayala never did so. § 87(2)(b) told him she had called her father prior to his arrival on scene.

Det. Ayala denied ever touching § 87(2)(b). He stated he never intentionally displayed his firearm, never drew it, and never pointed it at § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) were consistent about the timing of his arrival on scene. Though § 87(2)(b) stated § 87(2)(b) was on scene for these allegations, he was certain they did not occur. § 87(2)(g)

**Allegation J – Untruthful Statement: Detective Kenneth Ayala provided a false official statement to the CCRB.**

During his CCRB interview, Det. Ayala confirmed he took photographs of § 87(2)(b) and her vehicle while he was off duty for no direct law enforcement reason. He was asked if he took those photographs with his department-issued cellphone, which he denied and stated that he took photographs of § 87(2)(b) and her vehicle using his personal cellphone. His interview was on March 15, 2021.

On March 9, 2021, the office of the Integrity Control Officer of ESU provided seven photographs documenting § 87(2)(b) and/or her vehicle on the incident date from Det. Ayala's department-issued cellphone to IAB, who forwarded the photographs to the CCRB (BR 12-13) pursuant to a document request submitted on February 17, 2021.

Officers are prohibited from intentionally making a false official statement (BR 19). A false statement is an intentional statement that an officer knows to be untrue, and which is material to the outcome of an investigation in connection with which the statement is made. A fact is material when it is significant and a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail NYPD Patrol Guide Procedure 203-08.

In DCT Case 2017-18331, a Lieutenant was determined to have made statements that were knowingly misleading at the time she made them, and that the statements made were material false statements, because they went beyond a mere denial of misconduct and instead offered an alternative factual scenario which, if believed, would absolve her of responsibility (BR 20).

In DCT Case 2016-16097 the court held that to prove a false statement, it must be demonstrated that the statement was not only false, but also was not a mere denial of an administrative charge of misconduct (BR 21). This is in contrast to statements that create a "false description of events."

Det. Ayala's testimony definitively denying the use of his department-issued cellphone during the incident was material to the allegation he photographed § 87(2)(b) during the incident. Had Det. Ayala taken the photographs with personal cellphone, he would have avoided any possible disciplinary action. Det. Ayala knowingly provided those photographs pursuant to the CCRB's request for materials prior to his CCRB interview, but still denied using his department-issued cellphone. Det. Ayala and his legal representative were aware of the allegation that Det. Ayala had photographed § 87(2)(b) prior to his questioning about the incident.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been party (BR 16).



- Det. Ayala has been a member of service for 27 years and has been the subject of 13 other allegations in six other cases with three substantiations (see officer history):
  - 200403187 involved substantiated allegations of use of pepper spray, refusal to obtain medical treatment, and a retaliatory arrest. The Board proceeded with Charges and the NYPD imposed a penalty of a loss of eight vacation days.
  - § 87(2)(g)

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint as she did not want to see Det. Ayala again.
- The Office of the New York City Comptroller confirmed that no Notices of Claim were filed regarding this incident (BR 17).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 11

Investigator: <u>Benjamin Shelton</u>	<u>SI Benjamin Shelton</u>	<u>3/18/22</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Edwin Pena</u>	<u>IM Edwin Pena</u>	<u>03/18/22</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date